

**FEB 15 2006**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl'n. No. : 10/621,518  
Applicant : Margaret F. Hudson  
Filed : July 18, 2003  
Title : SCRAMBLED EGG SNACK FOOD  
TC./A.U. : 1761  
Examiner : Anthony J. Weier  
Docket No. : 10704-8 MIS/jb  
Customer No.: 24223  
Date : February 15, 2006

Confirmation No.: 1166

**APPEAL BRIEF**

**BY FACSIMILE** (571) 273-8300

Mail Stop Appeal Brief-Patents  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
U.S.A.

Dear Sir:

**1. Introduction**

This Appeal Brief is submitted in support of applicants appeal of the Final Rejection of claims 1 to 19. Authorization to charge the prescribed fee to our deposit account is enclosed. This Appeal is being submitted in triplicate.

**2. Extension of Time**

Petition is hereby made to provisions of 37 CFR 1.136(a) for an extension of two months of the period for submitting the Appeal Brief. Authorization to charge the prescribed fee to our deposit account is enclosed.

**3. Real Party of Interest**

The real party of interest is Burnbrae Farms Limited by virtue of deeds of Assignment recorded at Reel/frame 016495/0963.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

2

#### **4. Related Appeals and Interferences**

There are no other appeals or interferences known to the appellant, appellant's legal representative or assignee which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

#### **5. Status of Claims**

This application was filed with 33 claims. As a result of a restriction requirement, claims 20 to 33 were cancelled without prejudice to applicants right to file a divisional application directed to such subject matter. Claims 1 to 19 remain in the application unchanged and are reproduced in an Appendix hereto. Claims 1 to 19 currently stand rejected and this rejection is appealed herein.

#### **6. Status of Amendments**

There have been no amendments filed subsequent to final rejection.

#### **7. Summary of Claimed Subject Matter**

The invention as defined in independent claim 1 relates to a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating (Paragraph 0006).

The batter coating may be breaded (claim 2, dependent on claim 1; paragraph 0006, line 3). The product may have an elongate shape (claim 3, dependent on claim 1; paragraph 0023). The core may comprise about 70 to about 80 wt% (claim 4, dependent on claim 1; paragraph 0008).

The shaped core preferably includes liquid albumen and gelatin added to provide structural integrity to the core (claim 5, dependent on claim 1; paragraph 0010). The amount of liquid albumen may be used in an amounts of about 6 to about 7 wt% of the core while gelatin may be used in an amount of 0.5 to about 1 wt% (claim 6, dependent on claim 5; paragraph 0010).

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

3

The shaped core may include seasonings (claim 7, dependent on claim 5, paragraph 0011), such as salt and pepper present in amounts of about 1 to about 2 wt% of salt and about 0.01 to about 0.05 wt% of pepper, of the core (claim 8, dependent on claim 7; paragraph 0011).

The shaped core may include production assistance ingredients (claim 9, dependent on claim 8; paragraph 0012) which may include edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch (claim 9, dependent on claim 8; paragraph 0012). Such ingredients may be present in the relative proportion:

Edible oil	about 0.05 to about 1 wt%
Water	about 5 to about 15 wt%
Citric acid	about 0.01 to about 0.1 wt%
Xanthan gum	about 0.2 to about 0.3 wt%
Skim milk powder	about 2.5 to about 3 wt%
Modified starch	about 1 to about 2 wt%
(claim 11, dependent on claim 10; Table 1, paragraph 0013)	

Particulates may be added to the core to impart specific flavours, such as particulates including cheese, bacon, onion, ham and vegetables (claim 12, dependent on claim 10; paragraph 0005). The particulates may be cheese particulates present in an amount of about 4 to about 5 wt% of the core (claim 13, dependent on claim 12; paragraph 0014), or bacon pieces present in an amount of about 1 to about 2 wt% of the core (claim 14, dependent on claim 12; paragraph 0014).

The coating enrobing the scrambled egg core preferably comprising a predest on the egg core, a batter on the predest and breading on the batter (claim 15, dependent on claim 2; paragraph 0016), which may be used in amounts of about 1 to about 3 wt% of the product, batter and water in an amount of about 6 to about 10 wt% and binding in an amount of about 6 to about 8 wt% (claim 16, dependent on claim 15, Table V, paragraph 0017).

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

4

The product may be par-fried (claim 17, dependent on claim 1; paragraph 0027).

The egg core may be made from eggs containing added omega-3 fatty acids (claim 18, dependent on claim 1; paragraph 0019) which may be added in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs (claim 19, dependent on claim 18; paragraph 0009).

**8. Grounds of Rejection to be Reviewed on Appeal**

The grounds of rejection to be reviewed in this appeal are:

1. Rejection of claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al (US Patent No. 4,469,708);
2. Rejection of claims 3, 4, 6, 8, 9 and 16 under 35 USC 103(a) as being unpatentable over Rapp et al;
3. Rejection of claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with Heick et al (US Patent No. 5,614,244);
4. Rejection of claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with either one of EP 1,115,627 or WO 02/080703.

While the Office Action Summary of the Final Action indicates that claims 1 to 19 as rejected, there is no specific rejection of claim 17 in the body of the Final Action. In the event the Examiner intended to reject claim 17, it is requested that the specific rejection be provided so that applicants may address the same in this appeal.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

5

## **9. Argument**

### **(a) Nature of the Invention**

Eggs are highly nutritious and have been prepared in many ways, with various spices and sauces to further enhance their natural appealing taste, aroma and appearance. The present invention provides a scrambled egg snack food, which is convenient and may be prepared for consumption by frying, baking or microwave.

The product consists of a core of scrambled eggs, which may be formulated with a variety of particulates to provide specific tastes, enrobed in a coating of batter, which may be breaded. Particulates which may be formulated with the scrambled egg include cheese, bacon, onion, ham and vegetables.

As defined in claim 1, the snack food product of the invention comprises a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. The batter coating may be breaded (claim 2) and the product may have an elongate shape (claim 3).

The snack food product preferably has a core which comprises about 70 to about 80 wt% of the product (claim 4) while the shaped core preferably includes liquid albumen and gelatin to provide structural integrity to the core (claim 5). The liquid albumen preferably is used in an amount of about 6 to about 7 wt% of the core and the gelatin preferably is used in an amount of about 0.5 to about 1 wt% of the core (claim 6). The shape core may include seasonings (claim 7), preferably salt and pepper, present in amounts of about 1 to about 2 wt% and about 0.01 to about 0.05 wt% respectively, of the core (claim 8).

The shaped core may include scrambled egg production assistance ingredients (claim 9), including edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch (claim 10), which may be present in the respective amounts of edible oil: about 0.5 to about 1 wt%, water: about 5 to about 15 wt%, citric acid: about 0.01 to about 0.1 wt%, xanthan gum: about 0.26 to about 3 wt%,

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

6

skim milk powder; about 2.5 to about 3 wt% and modified starch about 1 to about 2 wt% (claim 11).

The core also may contain particulates, such as cheese, bacon, onion, ham and vegetable (claim 12). When cheese particulates are present, they are present in an amount of about 4 to about 6 wt% of the core (claim 13) while, if bacon pieces are present, they are present in an amount of about 1 to about 2 wt% of the core (claim 14).

The outer batter coating, when breaded, may comprise a predust on the egg core, a batter on the predust and breading on the batter (claim 15), preferably used in amount of about 1 to about 3 wt% of the product of predust, about 6 to about 10 wt% of the product of batter and water, and about 6 to about 8 wt% of the product of breading (claim 16).

The product may be par-fried (claim 17). The egg core may be formed from eggs containing added omega-3 fatty acids (claim 18) which may be present in an amount of about 100 to about 1500 mg of omega-3 fatty acid per 100 g of eggs (claim 19).

(b) Rejection of claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al.

The Examiner indicates in the Final Action that the claims are rejected for the reason set forth in the first action. In the first action, the Examiner indicates that:

"Rapp et al discloses a food product comprising a mass of scrambled eggs (including albumen), spices/condiments (i.e. seasoning), and gelatin (col. 3, lines 34-65; col. 4, lines 47-50; col. 5, lines 8 to 25) wherein said mass is coated with a batter coating which include breading (col. 5, lines 67 to col. 6, line 16) and a predusting dry binder mixture (col. 5, lines 36 to 40)."

The rejection is taken under 35 USC 102(b) and hence the cited prior art must disclose every element of the rejected claims.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

7

As described above, claim 1 of this patent application defines a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. Thus, essential to applicants invention is that the shaped core is formed by scrambled eggs. The term "scrambled eggs" refers to eggs cooked by a particular method (scrambling), in which egg yolks and whites are mixed together, optionally along with milk, and cooked while stirring.

By way of contrast, the Rapp reference describes a freeze-thaw stable egg product and a process of preparing the product. The product comprises discrete pieces of egg bound together and covered with a batter coating. As clearly described in col. 2, lines 16 to 21 of Rapp, the freeze-thaw stable egg product internally has the appearance of scrambled eggs, but nowhere in the reference is there described a product which is scrambled eggs.

As can be seen from the procedure described in Rapp, an egg mixture and water-binding carbohydrates is cooked sufficiently to coagulate the albumen content of the egg. The carbohydrates are used in sufficient quantity effective to render the eggs freeze-thaw stable when cooked. The cooked egg mixture is then subdivided into discrete pieces, the discrete pieces are coated with a binder in an amount effective to hold the discrete pieces together, the binder-water discrete pieces are shaped into a desired portion. The desired portion then is coated with batter. (see, for example, col. 3, lines 5 to 15).

Further details of cooking methods that Rapp contemplate are provided in col. 4, lines 35 to 43:

"The egg mixture is then cooked in any manner suitable for coagulating the albumen sufficiently to provide a desirable firm texture without any significant drying or discoloration. One method which has been found to be acceptable is to pour the egg mixture into plastic bags or sausage casings and then either immerse these in boiling water or place them in a steam oven for a period of time sufficient to provide the desired degree of cooking."



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

8

It is clear that none of the procedures describe here involves the production of scrambled egg, but rather a coagulated coherent egg mass. This is made abundantly clear in the succeeding paragraph, wherein it is stated:

"After the egg mixture has been cooked, it is preferably cooled... prior to subdividing the cooked egg mixture into discrete pieces. The cooked egg mixture can be subdivided in any manner suitable to provide pieces which, in the final product, given an appearance reminiscent of scrambled eggs." (emphasis added).

Thus, Rapp does not describe an egg product having a coherent mass of scrambled eggs, as required by claim 1.

In the Final Action, the Examiner stated:

"..... although the method by which the instant product is achieved may differ, the final product contains a material that has the appearance of scrambled eggs and, therefore, contains eggs which are essentially scrambled eggs as called for in the final product." (emphasis added).

As discussed above, the term "scrambled eggs" describes an egg product produced by a specific cooking method. Rapp's subdivided coagulated egg mass is not such a product.

With respect to claims 2, 5, 7 and 15, these claims are dependent directly or indirectly on claim 1 and by reason of lack of anticipation of claim 1, these claims also are not anticipated. With respect to claim 2, it is considered that Rapp discloses breading the outer batter coating of the structure.

With respect to claim 5, this claim requires a combination of added components to provide structural integrity to core, namely albumen and gelatin. While Rapp mentions gelatin as a binder, Rapp does not disclose the combination of gelatin with added albumen.



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

9

Claim 7 is dependent on claim 5. While Rapp discloses the possibility of the inclusion of seasonings in the product, there is no disclosure of the use of seasonings in combination with the binders specified in claim 5.

Claim 15 is dependent on claim 2 and specifies a predust on the egg core, a batter on the predust and breading on the batter. While Rapp describes battering and breading in col. 5, lines 62 to col. 6, line 15, there is no mention therein of the utilization of a predust.

It is submitted, therefore, that the Examiner is in error in rejecting claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al.

(c) Rejection of claims 3, 4, 6, 8, 9 and 16 under 35 USC 102(b)  
as being unpatentable over Rapp et al.

It has been demonstrated above that claim 1 is not anticipated by Rapp et al. Each of claims 3, 4, 6, 8, 9 and 16 is dependent, directly or indirectly, on claim 1.

Claim 3 recites that the product has an elongate shape. It is considered that Rapp et al refer to any desired shape of product.

Claim 6 is dependent on claim 5. It was shown above that claim 5, defining the use of a combination of liquid albumen and gelatin to provide structural integrity to the core, is not described in Rapp. Claim 6, dependent on claim 5, recites the amounts of the added albumen and gelatin used. It is submitted that Rapp does not suggest the use of the combination of binders in the amounts recited.

Claim 8 is dependent on claim 7 which, in turn, is dependent on claim 5. As noted above, claim 5 is not anticipated by Rapp. Claim 8 recites the specific amounts of salt and pepper used as seasonings. As the Examiner states in the Final Action, Rapp discloses the use of salt, but not pepper. It is submitted that the Rapp reference does not disclose or suggest the combination of the features of claims 5, 7 and 8.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

10

Claim 9 is dependent on claim 8 and requires the use of scrambled egg production assistance ingredients. While, as the Examiner indicates in the Final Action, Rapp discloses various product assistant ingredients, such as edible oil, xanthan gum, water and modified starch, the disclosure is in the context of the Rapp product. It is submitted that Rapp et al does not disclose or suggest the combination of the feature of claims 5, 7, 8 and 9.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 3, 4, 6, 8, 9 and 10 under 35 USC 103(a) as being unpatentable over Rapp et al.

(d) Rejection of claims 10 to 14 under 35 USC 102(b) as being unpatentable over Rapp et al. taken together with Heick et al.

Claim 10 is dependent on claim 9 and defines the production assistance ingredients of claim 9. Claim 11 is dependent on claim 10 and defines the proportions of the production assistance ingredients of claim 10. Claim 12 is dependent on claim 10 and recites that the scrambled egg core additionally contains particulates.

Claim 13 is dependent on claim 12 and recites that the particulates are cheese particulates in a specific amount. Claim 14 also is dependent on claim 12 and recites that the particulates are bacon pieces present in a specific amount.

Heick et al describes an egg and cheese food which comprises a continuous phase of cheese-containing material having discrete particles of cooked egg-containing material distributed therethrough, a quite different product from the present invention. In the first Office Action, the Examiner explains the reliance on Heick et al:

"..... it is known to employ cheese, skim milk and citric acid in scrambled eggs and other egg recipes as taught, for example in Heick et al. (see Examples and claims)".

In the Final Action, the Examiner discussed applicants submissions with respect to Heick et al:

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

11

"Applicants argues further that Heick et al teaches a product which is different from that of instant invention... Heick was applied in combination with Rapp et al, wherein Rapp et al is relied on for disclosing most of the invention. Heick et al was relied on for teaching the addition of certain ingredients in scrambled egg or scrambled egg products...."

As already demonstrated, Rapp et al is concerned with quite a different product from that claimed herein.

While a variety of materials may have been added to various egg recipes, it is submitted that the disclosures of Heick et al in this regard, do not sufficiently modify the teachings of Rapp et al to provide a scrambled eggs based snack food product which is a combination of the feature of claims 1, 5, 7, 8, 9 and 10 or claims 1, 5, 7, 8, 9 and 11 or claims 1, 5, 7, 8, 9, 10 and 12 or claims 1, 5, 7, 8, 9, 10, 12 and 13 or claims 1, 5, 7, 8, 9, 10, 12 and 14, as recited in claims 10 to 14.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken with Heick et al.

(e) Rejection of claims 18 and 19 under 35 USC 103(a)  
as being unpatentable over Rapp et al. taken together  
with either one of EP 1,155,627 or WO 02/080703

Claim 18 refer to the egg core being formed from eggs containing added omega-3 fatty acids while claim 19 refers to the amount of such omega-3 fatty acids present in the eggs.

The Examiner relies on the cited secondary references for a teaching that eggs having increased amounts of omega-3 fatty acids are well known. The cited EP 1,155,627 describes an egg having a lipid fraction which is balanced in seeds and free plant type omega 6 and omega 3 fatty acids. The cited WO 02/080703 describes a liquid egg product in which omega-3 fatty acid is added to shelled eggs. The specific amount of omega-3 fatty acid recited in claim 19 is specifically described on page 2, paragraph [0008] of the cited WO 02/080703.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

12

However, applicants rely for the patentability of claims 18 and 19 on the patentability of claim 1 over Rapp et al, as demonstrated above.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken with EP 1,155,627 or WO 02/080703.


**11. Summary**

For the reasons advanced herein, it is submitted that the rejections of:

- (a) Claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al;
- (b) Claims 3, 4, 6, 8, 9 and 16 under 35 USC 103 as being unpatentable over Rapp et al;
- (c) Claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with Helck et al; and
- (d) Claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with either one of EP 1,155,267 or WO 02/080703,

should be REVERSED.

Respectfully submitted,

  
\_\_\_\_\_  
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Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

13

**Appendix**

**Claims Appealed**

1. A snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating.
2. The product of claim 1 wherein said batter coating also is breaded.
3. The product of claim 1 having an elongate shape.
4. The product of claim 1 wherein said core comprises about 70 to about 80 wt% of the product.
5. The product of claim 1 wherein said shaped core includes liquid albumen and gelatin to provide structural integrity to the core.
6. The product of claim 5 wherein said liquid albumen is used in an amount of about 6 to about 7 wt% of the core and said gelatin is used in an amount of about 0.5 to about 1 wt% of the core.
7. The product of claim 5 wherein said shaped core includes seasonings.
8. The product of claim 7 wherein said seasonings are salt and pepper, present in amounts of about 1 to about 2 wt% and about 0.01 to about 0.05 wt%, respectively, of the core.
9. The product of claim 8 wherein said shaped core includes scrambled egg production assistance ingredients.
10. The product of claim 9 wherein said production assistance ingredients comprise edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch.
11. The product of claim 10 wherein said production assistance ingredients are present in weight percent amounts of the core:

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

14

Edible oil	about 0.05 to about 1 wt%
Water	about 5 to about 15 wt%
Citric acid	about 0.01 to about 0.1 wt%
Xanthan gum	about 0.2 to about 0.3 wt%
Skim milk powder	about 2.5 to about 3 wt%
Modified starch	about 1 to about 2 wt%

12. The product of claim 10 wherein the core contains particulates selected from the group consisting of cheese, bacon, onion, ham and vegetables.
13. The product of claim 12 wherein the particulates are cheese particulates present in an amount of about 4 to about 6 wt% of the core.
14. The product of claim 12 wherein the particulates are bacon pieces present in an amount of about 1 to about 2 wt% of the core.
15. The product of claim 2 wherein said coating comprises a predust on said egg core, a batter on said predust and breading on said batter.
16. The product of claim 15 wherein the predust is used in an amount of about 1 to about 3 wt% of the product, batter and water in an amount of about 6 to about 10 wt% of the product, and breading in an amount of about 6 to about 8 wt%.
17. The product of claim 1 which is par-fried.
18. The product of claim 1 wherein the egg core is formed from eggs containing added omega-3 fatty acids.
19. The product of claim 18 wherein the omega-3 fatty acids are present in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

15

**Evidence Appendix**

No evidence has been submitted pursuant to 37 CFR 1.130, 1.131 or 1.132 or other evidence entered by the Examiner and relied on by Appellants in this appeal.



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

16

**Related Proceedings Appendix**

There are no proceedings identified above with respect to the requirements of 37 CFR 41.37(c)(1)(ii) and hence there are no decisions to refer to.

FEB 15 2006

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**APPEAL BRIEF****BY FACSIMILE (571) 273-8300**

Mail Stop Appeal Brief-Patents  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
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Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

2

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#### **5. Status of Claims**

This application was filed with 33 claims. As a result of a restriction requirement, claims 20 to 33 were cancelled without prejudice to applicants right to file a divisional application directed to such subject matter. Claims 1 to 19 remain in the application unchanged and are reproduced in an Appendix hereto. Claims 1 to 19 currently stand rejected and this rejection is appealed herein.

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#### **7. Summary of Claimed Subject Matter**

The invention as defined in independent claim 1 relates to a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating (Paragraph 0006).

The batter coating may be breaded (claim 2, dependent on claim 1; paragraph 0006, line 3). The product may have an elongate shape (claim 3, dependent on claim 1; paragraph 0023). The core may comprise about 70 to about 80 wt% (claim 4, dependent on claim 1; paragraph 0008).

The shaped core preferably includes liquid albumen and gelatin added to provide structural integrity to the core (claim 5, dependent on claim 1; paragraph 0010). The amount of liquid albumen may be used in an amounts of about 6 to about 7 wt% of the core while gelatin may be used in an amount of 0.5 to about 1 wt% (claim 6, dependent on claim 5; paragraph 0010).

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

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The shaped core may include seasonings (claim 7, dependent on claim 5, paragraph 0011), such as salt and pepper present in amounts of about 1 to about 2 wt% of salt and about 0.01 to about 0.05 wt% of pepper, of the core (claim 8, dependent on claim 7; paragraph 0011).

The shaped core may include production assistance ingredients (claim 9, dependent on claim 8; paragraph 0012) which may include edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch (claim 9, dependent on claim 8; paragraph 0012). Such ingredients may be present in the relative proportion:

Edible oil	about 0.05 to about 1 wt%
Water	about 5 to about 15 wt%
Citric acid	about 0.01 to about 0.1 wt%
Xanthan gum	about 0.2 to about 0.3 wt%
Skim milk powder	about 2.5 to about 3 wt%
Modified starch	about 1 to about 2 wt%
(claim 11, dependent on claim 10; Table 1, paragraph 0013)	

Particulates may be added to the core to impart specific flavours, such as particulates including cheese, bacon, onion, ham and vegetables (claim 12, dependent on claim 10; paragraph 0005). The particulates may be cheese particulates present in an amount of about 4 to about 5 wt% of the core (claim 13, dependent on claim 12; paragraph 0014), or bacon pieces present in an amount of about 1 to about 2 wt% of the core (claim 14, dependent on claim 12; paragraph 0014).

The coating enrobing the scrambled egg core preferably comprising a pre-dust on the egg core, a batter on the pre-dust and breading on the batter (claim 15, dependent on claim 2; paragraph 0016), which may be used in amounts of about 1 to about 3 wt% of the product, batter and water in an amount of about 6 to about 10 wt% and binding in an amount of about 6 to about 8 wt% (claim 16, dependent on claim 15, Table V, paragraph 0017).

Application No. 10/621,518  
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The product may be par-fried (claim 17, dependent on claim 1; paragraph 0027).

The egg core may be made from eggs containing added omega-3 fatty acids (claim 18, dependent on claim 1; paragraph 0019) which may be added in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs (claim 19, dependent on claim 18; paragraph 0009).

**8. Grounds of Rejection to be Reviewed on Appeal**

The grounds of rejection to be reviewed in this appeal are:

1. Rejection of claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al (US Patent No. 4,469,708);
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## **9. Argument**

### **(a) Nature of the Invention**

Eggs are highly nutritious and have been prepared in many ways, with various spices and sauces to further enhance their natural appealing taste, aroma and appearance. The present invention provides a scrambled egg snack food, which is convenient and may be prepared for consumption by frying, baking or microwave.

The product consists of a core of scrambled eggs, which may be formulated with a variety of particulates to provide specific tastes, enrobed in a coating of batter, which may be breaded. Particulates which may be formulated with the scrambled egg include cheese, bacon, onion, ham and vegetables.

As defined in claim 1, the snack food product of the invention comprises a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. The batter coating may be breaded (claim 2) and the product may have an elongate shape (claim 3).

The snack food product preferably has a core which comprises about 70 to about 80 wt% of the product (claim 4) while the shaped core preferably includes liquid albumen and gelatin to provide structural integrity to the core (claim 5). The liquid albumen preferably is used in an amount of about 6 to about 7 wt% of the core and the gelatin preferably is used in an amount of about 0.5 to about 1 wt% of the core (claim 6). The shape core may include seasonings (claim 7), preferably salt and pepper, present in amounts of about 1 to about 2 wt% and about 0.01 to about 0.05 wt% respectively, of the core (claim 8).

The shaped core may include scrambled egg production assistance ingredients (claim 9), including edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch (claim 10), which may be present in the respective amounts of edible oil: about 0.5 to about 1 wt%, water: about 5 to about 15 wt%, citric acid: about 0.01 to about 0.1 wt%, xanthan gum: about 0.26 to about 3 wt%.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

6

skim milk powder; about 2.5 to about 3 wt% and modified starch about 1 to about 2 wt% (claim 11).

The core also may contain particulates, such as cheese, bacon, onion, ham and vegetable (claim 12). When cheese particulates are present, they are present in an amount of about 4 to about 6 wt% of the core (claim 13) while, if bacon pieces are present, they are present in an amount of about 1 to about 2 wt% of the core (claim 14).

The outer batter coating, when breaded, may comprise a predust on the egg core, a batter on the predust and breading on the batter (claim 15), preferably used in amount of about 1 to about 3 wt% of the product of predust, about 6 to about 10 wt% of the product of batter and water, and about 6 to about 8 wt% of the product of breading (claim 16).

The product may be par-fried (claim 17). The egg core may be formed from eggs containing added omega-3 fatty acids (claim 18) which may be present in an amount of about 100 to about 1500 mg of omega-3 fatty acid per 100 g of eggs (claim 19).

(b) Rejection of claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al.

The Examiner indicates in the Final Action that the claims are rejected for the reason set forth in the first action. In the first action, the Examiner indicates that:

"Rapp et al discloses a food product comprising a mass of scrambled eggs (including albumen), spices/condiments (i.e. seasoning), and gelatin (col. 3, lines 34-65; col. 4, lines 47-50; col. 5, lines 8 to 25) wherein said mass is coated with a batter coating which include breading (col. 5, lines 67 to col. 6, line 16) and a predusting dry binder mixture (col. 5, lines 36 to 40)."

The rejection is taken under 35 USC 102(b) and hence the cited prior art must disclose every element of the rejected claims.



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

7

As described above, claim 1 of this patent application defines a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. Thus, essential to applicants invention is that the shaped core is formed by scrambled eggs. The term "scrambled eggs" refers to eggs cooked by a particular method (scrambling), in which egg yolks and whites are mixed together, optionally along with milk, and cooked while stirring.

By way of contrast, the Rapp reference describes a freeze-thaw stable egg product and a process of preparing the product. The product comprises discrete pieces of egg bound together and covered with a batter coating. As clearly described in col. 2, lines 16 to 21 of Rapp, the freeze-thaw stable egg product internally has the appearance of scrambled eggs, but nowhere in the reference is there described a product which is scrambled eggs.

As can be seen from the procedure described in Rapp, an egg mixture and water-binding carbohydrates is cooked sufficiently to coagulate the albumen content of the egg. The carbohydrates are used in sufficient quantity effective to render the eggs freeze-thaw stable when cooked. The cooked egg mixture is then subdivided into discrete pieces, the discrete pieces are coated with a binder in an amount effective to hold the discrete pieces together, the binder-water discrete pieces are shaped into a desired portion. The desired portion then is coated with batter. (see, for example, col. 3, lines 5 to 15).

Further details of cooking methods that Rapp contemplate are provided in col. 4, lines 35 to 43:

"The egg mixture is then cooked in any manner suitable for coagulating the albumen sufficiently to provide a desirable firm texture without any significant drying or discoloration. One method which has been found to be acceptable is to pour the egg mixture into plastic bags or sausage casings and then either immerse these in boiling water or place them in a steam oven for a period of time sufficient to provide the desired degree of cooking."

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

8

It is clear that none of the procedures describe here involves the production of scrambled egg, but rather a coagulated coherent egg mass. This is made abundantly clear in the succeeding paragraph, wherein it is stated:

"After the egg mixture has been cooked, it is preferably cooled... prior to subdividing the cooked egg mixture into discrete pieces. The cooked egg mixture can be subdivided in any manner suitable to provide pieces which, in the final product, given an appearance reminiscent of scrambled eggs." (emphasis added).

Thus, Rapp does not describe an egg product having a coherent mass of scrambled eggs, as required by claim 1.

In the Final Action, the Examiner stated:

"..... although the method by which the instant product is achieved may differ, the final product contains a material that has the appearance of scrambled eggs and, therefore, contains eggs which are essentially scrambled eggs as called for in the final product." (emphasis added).

As discussed above, the term "scrambled eggs" describes an egg product produced by a specific cooking method. Rapp's subdivided coagulated egg mass is not such a product.

With respect to claims 2, 5, 7 and 15, these claims are dependent directly or indirectly on claim 1 and by reason of lack of anticipation of claim 1, these claims also are not anticipated. With respect to claim 2, it is considered that Rapp discloses breading the outer batter coating of the structure.

With respect to claim 5, this claim requires a combination of added components to provide structural integrity to core, namely albumen and gelatin. While Rapp mentions gelatin as a binder, Rapp does not disclose the combination of gelatin with added albumen.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

9

Claim 7 is dependent on claim 5. While Rapp discloses the possibility of the inclusion of seasonings in the product, there is no disclosure of the use of seasonings in combination with the binders specified in claim 5.

Claim 15 is dependent on claim 2 and specifies a predust on the egg core, a batter on the predust and breading on the batter. While Rapp describes battering and breading in col. 5, lines 62 to col. 6, line 15, there is no mention therein of the utilization of a predust.

It is submitted, therefore, that the Examiner is in error in rejecting claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al.

(c) Rejection of claims 3, 4, 6, 8, 9 and 16 under 35 USC 102(b)  
as being unpatentable over Rapp et al.

It has been demonstrated above that claim 1 is not anticipated by Rapp et al. Each of claims 3, 4, 6, 8, 9 and 16 is dependent, directly or indirectly, on claim 1.

Claim 3 recites that the product has an elongate shape. It is considered that Rapp et al refer to any desired shape of product.

Claim 6 is dependent on claim 5. It was shown above that claim 5, defining the use of a combination of liquid albumen and gelatin to provide structural integrity to the core, is not described in Rapp. Claim 6, dependent on claim 5, recites the amounts of the added albumen and gelatin used. It is submitted that Rapp does not suggest the use of the combination of binders in the amounts recited.

Claim 8 is dependent on claim 7 which, in turn, is dependent on claim 5. As noted above, claim 5 is not anticipated by Rapp. Claim 8 recites the specific amounts of salt and pepper used as seasonings. As the Examiner states in the Final Action, Rapp discloses the use of salt, but not pepper. It is submitted that the Rapp reference does not disclose or suggest the combination of the features of claims 5, 7 and 8.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

10

Claim 9 is dependent on claim 8 and requires the use of scrambled egg production assistance ingredients. While, as the Examiner indicates in the Final Action, Rapp discloses various product assistant ingredients, such as edible oil, xanthan gum, water and modified starch, the disclosure is in the context of the Rapp product. It is submitted that Rapp et al does not disclose or suggest the combination of the feature of claims 5, 7, 8 and 9.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 3, 4, 6, 8, 9 and 10 under 35 USC 103(a) as being unpatentable over Rapp et al.

(d) Rejection of claims 10 to 14 under 35 USC 102(b) as being unpatentable over Rapp et al. taken together with Heick et al.

Claim 10 is dependent on claim 9 and defines the production assistance ingredients of claim 9. Claim 11 is dependent on claim 10 and defines the proportions of the production assistance ingredients of claim 10. Claim 12 is dependent on claim 10 and recites that the scrambled egg core additionally contains particulates.

Claim 13 is dependent on claim 12 and recites that the particulates are cheese particulates in a specific amount. Claim 14 also is dependent on claim 12 and recites that the particulates are bacon pieces present in a specific amount.

Heick et al describes an egg and cheese food which comprises a continuous phase of cheese-containing material having discrete particles of cooked egg-containing material distributed therethrough, a quite different product from the present invention. In the first Office Action, the Examiner explains the reliance on Heick et al:

"..... it is known to employ cheese, skim milk and citric acid in scrambled eggs and other egg recipes as taught, for example in Heick et al. (see Examples and claims)".

In the Final Action, the Examiner discussed applicants submissions with respect to Heick et al:

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

11

"Applicants argues further that Heick et al teaches a product which is different from that of instant invention... Heick was applied in combination with Rapp et al, wherein Rapp et al is relied on for disclosing most of the invention. Heick et al was relied on for teaching the addition of certain ingredients in scrambled egg or scrambled egg products...."

As already demonstrated, Rapp et al is concerned with quite a different product from that claimed herein.

While a variety of materials may have been added to various egg recipes, it is submitted that the disclosures of Heick et al in this regard, do not sufficiently modify the teachings of Rapp et al to provide a scrambled eggs based snack food product which is a combination of the feature of claims 1, 5, 7, 8, 9 and 10 or claims 1, 5, 7, 8, 9 and 11 or claims 1, 5, 7, 8, 9, 10 and 12 or claims 1, 5, 7, 8, 9, 10, 12 and 13 or claims 1, 5, 7, 8, 9, 10, 12 and 14, as recited in claims 10 to 14.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken with Heick et al.

(e) Rejection of claims 18 and 19 under 35 USC 103(a)  
as being unpatentable over Rapp et al. taken together  
with either one of EP 1,155,627 or WO 02/080703

Claim 18 refer to the egg core being formed from eggs containing added omega-3 fatty acids while claim 19 refers to the amount of such omega-3 fatty acids present in the eggs.

The Examiner relies on the cited secondary references for a teaching that eggs having increased amounts of omega-3 fatty acids are well known. The cited EP 1,155,627 describes an egg having a lipid fraction which is balanced in seeds and free plant type omega 6 and omega 3 fatty acids. The cited WO 02/080703 describes a liquid egg product in which omega-3 fatty acid is added to shelled eggs. The specific amount of omega-3 fatty acid recited in claim 19 is specifically described on page 2, paragraph [0008] of the cited WO 02/080703.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

12

However, applicants rely for the patentability of claims 18 and 19 on the patentability of claim 1 over Rapp et al, as demonstrated above.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken with EP 1,155,627 or WO 02/080703.


#### **11. Summary**

For the reasons advanced herein, it is submitted that the rejections of:

- (a) Claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al;
- (b) Claims 3, 4, 6, 8, 9 and 16 under 35 USC 103 as being unpatentable over Rapp et al;
- (c) Claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with Heick et al; and
- (d) Claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with either one of EP 1,155,267 or WO 02/080703,

should be REVERSED.

Respectfully submitted,

  
\_\_\_\_\_  
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Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

13

**Appendix**

**Claims Appealed**

1. A snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating.
2. The product of claim 1 wherein said batter coating also is breaded.
3. The product of claim 1 having an elongate shape.
4. The product of claim 1 wherein said core comprises about 70 to about 80 wt% of the product.
5. The product of claim 1 wherein said shaped core includes liquid albumen and gelatin to provide structural integrity to the core.
6. The product of claim 5 wherein said liquid albumen is used in an amount of about 6 to about 7 wt% of the core and said gelatin is used in an amount of about 0.5 to about 1 wt% of the core.
7. The product of claim 5 wherein said shaped core includes seasonings.
8. The product of claim 7 wherein said seasonings are salt and pepper, present in amounts of about 1 to about 2 wt% and about 0.01 to about 0.05 wt%, respectively, of the core.
9. The product of claim 8 wherein said shaped core includes scrambled egg production assistance ingredients.
10. The product of claim 9 wherein said production assistance ingredients comprise edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch.
11. The product of claim 10 wherein said production assistance ingredients are present in weight percent amounts of the core:



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

14

Edible oil	about 0.05 to about 1 wt%
Water	about 5 to about 15 wt%
Citric acid	about 0.01 to about 0.1 wt%
Xanthan gum	about 0.2 to about 0.3 wt%
Skim milk powder	about 2.5 to about 3 wt%
Modified starch	about 1 to about 2 wt%

12. The product of claim 10 wherein the core contains particulates selected from the group consisting of cheese, bacon, onion, ham and vegetables.
13. The product of claim 12 wherein the particulates are cheese particulates present in an amount of about 4 to about 6 wt% of the core.
14. The product of claim 12 wherein the particulates are bacon pieces present in an amount of about 1 to about 2 wt% of the core.
15. The product of claim 2 wherein said coating comprises a predust on said egg core, a batter on said predust and breading on said batter.
16. The product of claim 15 wherein the predust is used in an amount of about 1 to about 3 wt% of the product, batter and water in an amount of about 6 to about 10 wt% of the product, and breading in an amount of about 6 to about 8 wt%.
17. The product of claim 1 which is par-fried.
18. The product of claim 1 wherein the egg core is formed from eggs containing added omega-3 fatty acids.
19. The product of claim 18 wherein the omega-3 fatty acids are present in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

15

**Evidence Appendix**

No evidence has been submitted pursuant to 37 CFR 1.130, 1.131 or 1.132 or other evidence entered by the Examiner and relied on by Appellants in this appeal.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

16

**Related Proceedings Appendix**

There are no proceedings identified above with respect to the requirements of 37 CFR 41.37(c)(1)(ii) and hence there are no decisions to refer to.

**FEB 15 2006**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl'n. No. : 10/621,518 Confirmation No.: 1166  
Applicant : Margaret F. Hudson  
Filed : July 18, 2003  
Title : SCRAMBLED EGG SNACK FOOD  
TC./A.U. : 1761  
Examiner : Anthony J. Weier  
Docket No. : 10704-8 MIS/jb  
Customer No.: 24223  
Date : February 15, 2006

**APPEAL BRIEF**

**BY FACSIMILE** (571) 273-8300

Mail Stop Appeal Brief-Patents  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
U.S.A.

Dear Sir:

**1. Introduction**

This Appeal Brief is submitted in support of applicants appeal of the Final Rejection of claims 1 to 19. Authorization to charge the prescribed fee to our deposit account is enclosed. This Appeal is being submitted in triplicate.

**2. Extension of Time**

Petition is hereby made to provisions of 37 CFR 1.136(a) for an extension of two months of the period for submitting the Appeal Brief. Authorization to charge the prescribed fee to our deposit account is enclosed.

**3. Real Party of Interest**

The real party of interest is Burnbrae Farms Limited by virtue of deeds of Assignment recorded at Reel/frame 016495/0963.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

2

#### **4. Related Appeals and Interferences**

There are no other appeals or interferences known to the appellant, appellant's legal representative or assignee which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

#### **5. Status of Claims**

This application was filed with 33 claims. As a result of a restriction requirement, claims 20 to 33 were cancelled without prejudice to applicants right to file a divisional application directed to such subject matter. Claims 1 to 19 remain in the application unchanged and are reproduced in an Appendix hereto. Claims 1 to 19 currently stand rejected and this rejection is appealed herein.

#### **6. Status of Amendments**

There have been no amendments filed subsequent to final rejection.

#### **7. Summary of Claimed Subject Matter**

The invention as defined in independent claim 1 relates to a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating (Paragraph 0006).

The batter coating may be breaded (claim 2, dependent on claim 1; paragraph 0006, line 3). The product may have an elongate shape (claim 3, dependent on claim 1; paragraph 0023). The core may comprise about 70 to about 80 wt% (claim 4, dependent on claim 1; paragraph 0008).

The shaped core preferably includes liquid albumen and gelatin added to provide structural integrity to the core (claim 5, dependent on claim 1; paragraph 0010). The amount of liquid albumen may be used in an amounts of about 6 to about 7 wt% of the core while gelatin may be used in an amount of 0.5 to about 1 wt% (claim 6, dependent on claim 5; paragraph 0010).

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

3

The shaped core may include seasonings (claim 7, dependent on claim 5, paragraph 0011), such as salt and pepper present in amounts of about 1 to about 2 wt% of salt and about 0.01 to about 0.05 wt% of pepper, of the core (claim 8, dependent on claim 7; paragraph 0011).

The shaped core may include production assistance ingredients (claim 9, dependent on claim 8; paragraph 0012) which may include edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch (claim 9, dependent on claim 8; paragraph 0012). Such ingredients may be present in the relative proportion:

Edible oil	about 0.05 to about 1 wt%
Water	about 5 to about 15 wt%
Citric acid	about 0.01 to about 0.1 wt%
Xanthan gum	about 0.2 to about 0.3 wt%
Skim milk powder	about 2.5 to about 3 wt%
Modified starch	about 1 to about 2 wt%
(claim 11, dependent on claim 10; Table 1, paragraph 0013)	

Particulates may be added to the core to impart specific flavours, such particulates including cheese, bacon, onion, ham and vegetables (claim 12, dependent on claim 10; paragraph 0005). The particulates may be cheese particulates present in an amount of about 4 to about 5 wt% of the core (claim 13, dependent on claim 12; paragraph 0014), or bacon pieces present in an amount of about 1 to about 2 wt% of the core (claim 14, dependent on claim 12; paragraph 0014).

The coating enrobing the scrambled egg core preferably comprising a predest on the egg core, a batter on the predest and breading on the batter (claim 15, dependent on claim 2; paragraph 0016), which may be used in amounts of about 1 to about 3 wt% of the product, batter and water in an amount of about 6 to about 10 wt% and binding in an amount of about 6 to about 8 wt% (claim 16, dependent on claim 15, Table V, paragraph 0017).

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

4

The product may be par-fried (claim 17, dependent on claim 1; paragraph 0027).

The egg core may be made from eggs containing added omega-3 fatty acids (claim 18, dependent on claim 1; paragraph 0019) which may be added in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs (claim 19, dependent on claim 18; paragraph 0009).

**8. Grounds of Rejection to be Reviewed on Appeal**

The grounds of rejection to be reviewed in this appeal are:

1. Rejection of claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al (US Patent No. 4,469,708);
2. Rejection of claims 3, 4, 6, 8, 9 and 16 under 35 USC 103(a) as being unpatentable over Rapp et al;
3. Rejection of claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with Heick et al (US Patent No. 5,614,244);
4. Rejection of claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with either one of EP 1,115,627 or WO 02/080703.

While the Office Action Summary of the Final Action indicates that claims 1 to 19 as rejected, there is no specific rejection of claim 17 in the body of the Final Action. In the event the Examiner intended to reject claim 17, it is requested that the specific rejection be provided so that applicants may address the same in this appeal.



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

5

## **9. Argument**

### **(a) Nature of the Invention**

Eggs are highly nutritious and have been prepared in many ways, with various spices and sauces to further enhance their natural appealing taste, aroma and appearance. The present invention provides a scrambled egg snack food, which is convenient and may be prepared for consumption by frying, baking or microwave.

The product consists of a core of scrambled eggs, which may be formulated with a variety of particulates to provide specific tastes, enrobed in a coating of batter, which may be breaded. Particulates which may be formulated with the scrambled egg include cheese, bacon, onion, ham and vegetables.

As defined in claim 1, the snack food product of the invention comprises a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. The batter coating may be breaded (claim 2) and the product may have an elongate shape (claim 3).

The snack food product preferably has a core which comprises about 70 to about 80 wt% of the product (claim 4) while the shaped core preferably includes liquid albumen and gelatin to provide structural integrity to the core (claim 5). The liquid albumen preferably is used in an amount of about 6 to about 7 wt% of the core and the gelatin preferably is used in an amount of about 0.5 to about 1 wt% of the core (claim 6). The shape core may include seasonings (claim 7), preferably salt and pepper, present in amounts of about 1 to about 2 wt% and about 0.01 to about 0.05 wt% respectively, of the core (claim 8).

The shaped core may include scrambled egg production assistance ingredients (claim 9), including edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch (claim 10), which may be present in the respective amounts of edible oil: about 0.5 to about 1 wt%, water: about 5 to about 15 wt%, citric acid: about 0.01 to about 0.1 wt%, xanthan gum: about 0.26 to about 3 wt%.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

6

skim milk powder; about 2.5 to about 3 wt% and modified starch about 1 to about 2 wt% (claim 11).

The core also may contain particulates, such as cheese, bacon, onion, ham and vegetable (claim 12). When cheese particulates are present, they are present in an amount of about 4 to about 6 wt% of the core (claim 13) while, if bacon pieces are present, they are present in an amount of about 1 to about 2 wt% of the core (claim 14).

The outer batter coating, when breaded, may comprise a predust on the egg core, a batter on the predust and breading on the batter (claim 15), preferably used in amount of about 1 to about 3 wt% of the product of predust, about 6 to about 10 wt% of the product of batter and water, and about 6 to about 8 wt% of the product of breading (claim 16).

The product may be par-fried (claim 17). The egg core may be formed from eggs containing added omega-3 fatty acids (claim 18) which may be present in an amount of about 100 to about 1500 mg of omega-3 fatty acid per 100 g of eggs (claim 19).

(b) Rejection of claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al.

The Examiner indicates in the Final Action that the claims are rejected for the reason set forth in the first action. In the first action, the Examiner indicates that:

"Rapp et al discloses a food product comprising a mass of scrambled eggs (including albumen), spices/condiments (i.e. seasoning), and gelatin (col. 3, lines 34-65; col. 4, lines 47-50; col. 5, lines 8 to 25) wherein said mass is coated with a batter coating which include breading (col. 5, lines 67 to col. 6, line 16) and a predusting dry binder mixture (col. 5, lines 36 to 40)."

The rejection is taken under 35 USC 102(b) and hence the cited prior art must disclose every element of the rejected claims.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

7

As described above, claim 1 of this patent application defines a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. Thus, essential to applicants invention is that the shaped core is formed by scrambled eggs. The term "scrambled eggs" refers to eggs cooked by a particular method (scrambling), in which egg yolks and whites are mixed together, optionally along with milk, and cooked while stirring.

By way of contrast, the Rapp reference describes a freeze-thaw stable egg product and a process of preparing the product. The product comprises discrete pieces of egg bound together and covered with a batter coating. As clearly described in col. 2, lines 16 to 21 of Rapp, the freeze-thaw stable egg product internally has the appearance of scrambled eggs, but nowhere in the reference is there described a product which is scrambled eggs.

As can be seen from the procedure described in Rapp, an egg mixture and water-binding carbohydrates is cooked sufficiently to coagulate the albumen content of the egg. The carbohydrates are used in sufficient quantity effective to render the eggs freeze-thaw stable when cooked. The cooked egg mixture is then subdivided into discrete pieces, the discrete pieces are coated with a binder in an amount effective to hold the discrete pieces together, the binder-water discrete pieces are shaped into a desired portion. The desired portion then is coated with batter. (see, for example, col. 3, lines 5 to 15).

Further details of cooking methods that Rapp contemplate are provided in col. 4, lines 35 to 43:

"The egg mixture is then cooked in any manner suitable for coagulating the albumen sufficiently to provide a desirable firm texture without any significant drying or discoloration. One method which has been found to be acceptable is to pour the egg mixture into plastic bags or sausage casings and then either immerse these in boiling water or place them in a steam oven for a period of time sufficient to provide the desired degree of cooking."

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

8

It is clear that none of the procedures describe here involves the production of scrambled egg, but rather a coagulated coherent egg mass. This is made abundantly clear in the succeeding paragraph, wherein it is stated:

"After the egg mixture has been cooked, it is preferably cooled... prior to subdividing the cooked egg mixture into discrete pieces. The cooked egg mixture can be subdivided in any manner suitable to provide pieces which, in the final product, given an appearance reminiscent of scrambled eggs." (emphasis added).

Thus, Rapp does not describe an egg product having a coherent mass of scrambled eggs, as required by claim 1.

In the Final Action, the Examiner stated:

"..... although the method by which the instant product is achieved may differ, the final product contains a material that has the appearance of scrambled eggs and, therefore, contains eggs which are essentially scrambled eggs as called for in the final product." (emphasis added).

As discussed above, the term "scrambled eggs" describes an egg product produced by a specific cooking method. Rapp's subdivided coagulated egg mass is not such a product.

With respect to claims 2, 5, 7 and 15, these claims are dependent directly or indirectly on claim 1 and by reason of lack of anticipation of claim 1, these claims also are not anticipated. With respect to claim 2, it is considered that Rapp discloses breading the outer batter coating of the structure.

With respect to claim 5, this claim requires a combination of added components to provide structural integrity to core, namely albumen and gelatin. While Rapp mentions gelatin as a binder, Rapp does not disclose the combination of gelatin with added albumen.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

9

Claim 7 is dependent on claim 5. While Rapp discloses the possibility of the inclusion of seasonings in the product, there is no disclosure of the use of seasonings in combination with the binders specified in claim 5.

Claim 15 is dependent on claim 2 and specifies a predust on the egg core, a batter on the predust and breading on the batter. While Rapp describes battering and breading in col. 5, lines 62 to col. 6, line 15, there is no mention therein of the utilization of a predust.

It is submitted, therefore, that the Examiner is in error in rejecting claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al.

(c) Rejection of claims 3, 4, 6, 8, 9 and 16 under 35 USC 102(b) as being unpatentable over Rapp et al.

It has been demonstrated above that claim 1 is not anticipated by Rapp et al. Each of claims 3, 4, 6, 8, 9 and 16 is dependent, directly or indirectly, on claim 1.

Claim 3 recites that the product has an elongate shape. It is considered that Rapp et al refer to any desired shape of product.

Claim 6 is dependent on claim 5. It was shown above that claim 5, defining the use of a combination of liquid albumen and gelatin to provide structural integrity to the core, is not described in Rapp. Claim 6, dependent on claim 5, recites the amounts of the added albumen and gelatin used. It is submitted that Rapp does not suggest the use of the combination of binders in the amounts recited.

Claim 8 is dependent on claim 7 which, in turn, is dependent on claim 5. As noted above, claim 5 is not anticipated by Rapp. Claim 8 recites the specific amounts of salt and pepper used as seasonings. As the Examiner states in the Final Action, Rapp discloses the use of salt, but not pepper. It is submitted that the Rapp reference does not disclose or suggest the combination of the features of claims 5, 7 and 8.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

10

Claim 9 is dependent on claim 8 and requires the use of scrambled egg production assistance ingredients. While, as the Examiner indicates in the Final Action, Rapp discloses various product assistant ingredients, such as edible oil, xanthan gum, water and modified starch, the disclosure is in the context of the Rapp product. It is submitted that Rapp et al does not disclose or suggest the combination of the feature of claims 5, 7, 8 and 9.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 3, 4, 6, 8, 9 and 10 under 35 USC 103(a) as being unpatentable over Rapp et al.

(d) Rejection of claims 10 to 14 under 35 USC 102(b) as being unpatentable over Rapp et al. taken together with Heick et al.

Claim 10 is dependent on claim 9 and defines the production assistance ingredients of claim 9. Claim 11 is dependent on claim 10 and defines the proportions of the production assistance ingredients of claim 10. Claim 12 is dependent on claim 10 and recites that the scrambled egg core additionally contains particulates.

Claim 13 is dependent on claim 12 and recites that the particulates are cheese particulates in a specific amount. Claim 14 also is dependent on claim 12 and recites that the particulates are bacon pieces present in a specific amount.

Heick et al describes an egg and cheese food which comprises a continuous phase of cheese-containing material having discrete particles of cooked egg-containing material distributed therethrough, a quite different product from the present invention. In the first Office Action, the Examiner explains the reliance on Heick et al:

"..... it is known to employ cheese, skim milk and citric acid in scrambled eggs and other egg recipes as taught, for example in Heick et al. (see Examples and claims)".

In the Final Action, the Examiner discussed applicants submissions with respect to Heick et al:



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

11

"Applicants argues further that Heick et al teaches a product which is different from that of instant invention... Heick was applied in combination with Rapp et al, wherein Rapp et al is relied on for disclosing most of the invention. Heick et al was relied on for teaching the addition of certain ingredients in scrambled egg or scrambled egg products...."

As already demonstrated, Rapp et al is concerned with quite a different product from that claimed herein.

While a variety of materials may have been added to various egg recipes, it is submitted that the disclosures of Heick et al in this regard, do not sufficiently modify the teachings of Rapp et al to provide a scrambled eggs based snack food product which is a combination of the feature of claims 1, 5, 7, 8, 9 and 10 or claims 1, 5, 7, 8, 9 and 11 or claims 1, 5, 7, 8, 9, 10 and 12 or claims 1, 5, 7, 8, 9, 10, 12 and 13 or claims 1, 5, 7, 8, 9, 10, 12 and 14, as recited in claims 10 to 14.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken with Heick et al.

(e) Rejection of claims 18 and 19 under 35 USC 103(a)  
as being unpatentable over Rapp et al. taken together  
with either one of EP 1,155,627 or WO 02/080703

Claim 18 refer to the egg core being formed from eggs containing added omega-3 fatty acids while claim 19 refers to the amount of such omega-3 fatty acids present in the eggs.

The Examiner relies on the cited secondary references for a teaching that eggs having increased amounts of omega-3 fatty acids are well known. The cited EP 1,155,627 describes an egg having a lipid fraction which is balanced in seeds and free plant type omega 6 and omega 3 fatty acids. The cited WO 02/080703 describes a liquid egg product in which omega-3 fatty acid is added to shelled eggs. The specific amount of omega-3 fatty acid recited in claim 19 is specifically described on page 2, paragraph [0008] of the cited WO 02/080703.



Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

12

However, applicants rely for the patentability of claims 18 and 19 on the patentability of claim 1 over Rapp et al, as demonstrated above.

Accordingly, it is submitted that the Examiner is in error in rejecting claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken with EP 1,155,627 or WO 02/080703.

**11. Summary**

For the reasons advanced herein, it is submitted that the rejections of:

- (a) Claims 1, 2, 5, 7 and 15 under 35 USC 102(b) as being anticipated by Rapp et al;
- (b) Claims 3, 4, 6, 8, 9 and 16 under 35 USC 103 as being unpatentable over Rapp et al;
- (c) Claims 10 to 14 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with Heick et al; and
- (d) Claims 18 and 19 under 35 USC 103(a) as being unpatentable over Rapp et al taken together with either one of EP 1,155,267 or WO 02/080703,

should be REVERSED.

Respectfully submitted,



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Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

13

## **Appendix**

### **Claims Appealed**

1. A snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating.
2. The product of claim 1 wherein said batter coating also is breaded.
3. The product of claim 1 having an elongate shape.
4. The product of claim 1 wherein said core comprises about 70 to about 80 wt% of the product.
5. The product of claim 1 wherein said shaped core includes liquid albumen and gelatin to provide structural integrity to the core.
6. The product of claim 5 wherein said liquid albumen is used in an amount of about 6 to about 7 wt% of the core and said gelatin is used in an amount of about 0.5 to about 1 wt% of the core.
7. The product of claim 5 wherein said shaped core includes seasonings.
8. The product of claim 7 wherein said seasonings are salt and pepper, present in amounts of about 1 to about 2 wt% and about 0.01 to about 0.05 wt%, respectively, of the core.
9. The product of claim 8 wherein said shaped core includes scrambled egg production assistance ingredients.
10. The product of claim 9 wherein said production assistance ingredients comprise edible oil, water, citric acid, xanthan gum, skim milk powder and modified starch.
11. The product of claim 10 wherein said production assistance ingredients are present in weight percent amounts of the core:

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

14

Edible oil	about 0.05 to about 1 wt%
Water	about 5 to about 15 wt%
Citric acid	about 0.01 to about 0.1 wt%
Xanthan gum	about 0.2 to about 0.3 wt%
Skim milk powder	about 2.5 to about 3 wt%
Modified starch	about 1 to about 2 wt%

12. The product of claim 10 wherein the core contains particulates selected from the group consisting of cheese, bacon, onion, ham and vegetables.
13. The product of claim 12 wherein the particulates are cheese particulates present in an amount of about 4 to about 6 wt% of the core.
14. The product of claim 12 wherein the particulates are bacon pieces present in an amount of about 1 to about 2 wt% of the core.
15. The product of claim 2 wherein said coating comprises a predust on said egg core, a batter on said predust and breading on said batter.
16. The product of claim 15 wherein the predust is used in an amount of about 1 to about 3 wt% of the product, batter and water in an amount of about 6 to about 10 wt% of the product, and breading in an amount of about 6 to about 8 wt%.
17. The product of claim 1 which is par-fried.
18. The product of claim 1 wherein the egg core is formed from eggs containing added omega-3 fatty acids.
19. The product of claim 18 wherein the omega-3 fatty acids are present in an amount of about 100 to about 1500 mg of added omega-3 fatty acid per 100 g of eggs.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

15

**Evidence Appendix**

No evidence has been submitted pursuant to 37 CFR 1.130, 1.131 or 1.132 or other evidence entered by the Examiner and relied on by Appellants in this appeal.

Application No. 10/621,518  
Appeal Brief Dated: February 15, 2006

16

**Related Proceedings Appendix**

There are no proceedings identified above with respect to the requirements of 37 CFR 41.37(c)(1)(ii) and hence there are no decisions to refer to.